IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 22810 of 2007(M)

CMA.85/2006 of DISTRICT COURT, THODUPUZHA
OS.290/2000 of MUNI-MAGI COURT, DEVIKULAM

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PETITIONER:

K.E.ABEL, S/O ITTIAVIRAH,
KATTANGANAYIL HOUSE, KUROOR KARA,
KOTHAMANGALAM VILLAGE, KOTHAMANGALAM TALUK.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM

RESPONDENTS:

KALIYAPPAN, S/O SANKILIMADAN,
RESIDING AT HOUSE NO.II/86,
ALATHOORMASI KARA, MARAYOOR VILLAGE,
DEVIKULAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 22810 OF 2007 M

Dated this the 25th July, 2007.

JUDGMENT

This writ petition is preferred with a prayer to quash the proceedings under Ext.P4 including Exts.P9 and P10. The brief facts are. An ex parte decree was passed in a case and an application to set aside the ex parte decree was filed. The said application was dismissed for default. In order to restore that application another application was filed. It is against the order therein a civil miscellaneous appeal has been preferred before the District Court, Thodupuzha. The learned District Judge condoned the delay in filing the appeal and granted an interim stay. Now the contention of the writ petitioner is that a C.M.A will not lie against an order in an application which is to restore the restoration application dismissed for default. It is a matter that requires consideration. If the C.M.A itself is not maintainable then it follows that no relief can be granted at all. Therefore, the learned District Judge, Thodupuzha is directed to consider whether C.M.A 85/06 filed before the court is maintainable in accordance with law, after hearing both sides. The learned District Judge is directed to dispose of the matter within a period of six weeks from today. The writ petitioner shall produce

a copy of this judgment before the District Judge for necessary compliance. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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